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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 450, Misc. ~~770~~ 83

ANTONIO RICHARD ROCHIN.

*Petitioner,*

*vs.*

THE PEOPLE OF THE STATE OF CALIFORNIA.

*Respondent.*

RESPONDENT'S OPPOSING BRIEF.

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THE PEOPLE OF THE STATE OF CALIFORNIA,

*Respondent.*

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**RESPONDENT'S OPPOSING BRIEF.**

---

**Statement of the Case.**

Petitioner was accused by information of the crime of violation of Section 11500 of the California Health and Safety Code, a felony, namely, the unlawful possession of morphine. Following a trial by the court sitting without a jury, petitioner was found guilty as charged in the information, whereupon judgment was pronounced and petitioner was sentenced to the Los Angeles County Jail for a term of sixty (60) days. The judgment of the trial court was affirmed by the California District Court of Appeal, Second Appellate District, Division III, in the case of *People v. Rochin*, 101 A. C. A. 163, 225 P. 2d 1. A petition for hearing in the Supreme Court of the State of California was denied on January 11, 1951, two justices dissenting from the Order denying a hearing.

Petitioner herein asserts that said judgment of conviction was rendered contrary to the provisions of the Fourth, Fifth and Fourteenth Amendments of the Constitution of the United States, and Article I, Section 19, of the Constitution of California, in that such judgment and conviction was based upon evidence illegally obtained by unreasonable or unlawful search and seizure and in violation of the privilege against self-incrimination.

### Statement of Facts.

Three Los Angeles County Deputy Sheriffs assigned to the Narcotic Detail had entered a two-story dwelling house in which Antonio Richard Rochin resided, through an open door to the stairway and immediately had gone upstairs. [Rep. Tr. pp. 3, 4, 27, 28.] The officers had neither forced nor broken open the downstairs door, but they had forced open the door to petitioner's upstairs room, which door had a small hook on it. [Rep. Tr. p. 28.] Inside the room petitioner Rochin had been seated on a bed on which a woman named "Hernandez" was lying. [Rep. Tr. pp. 4, 5.] Also inside the petitioner's room, Deputy Sheriff Jones, from about two feet away, had seen two capsules wrapped in clear white cellophane on the nightstand beside the bed. [Rep. Tr. pp. 5, 28, 30, 33.] Officer Jones first had pointed to the capsules and had asked petitioner "whose stuff is this?" [Rep. Tr. p. 5, line 26; p. 28] whereupon petitioner had reached over, grabbed the two capsules and had placed them in his mouth. [Rep. Tr. pp. 6, 28, 29, 33, 34.] The three deputy sheriffs had attempted to get the capsules from his mouth. [Rep. Tr. pp. 6, 35.] Some force had been applied to petitioner's throat, which force the officers believed necessary to eject the capsules from his throat

and mouth. [Rep. Tr. pp. 35, 36.] Petitioner had hollered a bit but had not screamed. [Rep. Tr. p. 36.] Petitioner had not been knocked to the floor, pushed down on the floor, stamped on or kicked. [Rep. Tr. p. 36.] Actually, Rochin had fought back while the officers unsuccessfully tried to remove the capsules. [Rep. Tr. pp. 6, 37.] Specifically, Narcotic Officer Jones [Rep. Tr. p. 3] testified that before Rochin had hurled them into his mouth, Jones had seen what looked like capsules of heroin [Rep. Tr. p. 54], that narcotics usually were wrapped in such fashion, and that Jones inferred such narcotic content from the fact that petitioner had placed them in his mouth and had swallowed them. [Rep. Tr. pp. 55, 56.]

From his room, petitioner Rochin immediately had been taken to a hospital where a medical doctor had placed a tube down the petitioner's throat and then had poured a liquid solution into the tube and into Mr. Rochin's stomach. [Rep. Tr. p. 7.] Two capsules still wrapped in cellophane had been expelled from petitioner's mouth into a pail [Rep. Tr. pp. 7, 8, 51], which capsules upon analysis proved to be morphine, a derivative of opium. [Rep. Tr. p. 59.]

Moreover, the instant record discloses that when petitioner was taken from his room to a police car, the officers told him that they were going to cause his stomach to be pumped by a doctor but petitioner offered no objection. [Rep. Tr. p. 43.] At the hospital, petitioner got on the operating table himself and said nothing when

Officer Jones asked the doctor to pump his stomach." [Rep. Tr. pp. 43, 44.] Petitioner had not said that he didn't want a tube to be placed down his throat [Rep. Tr. p. 45.] nor did Jones hear him offer an objection to having his stomach pumped. [Rep. Tr. p. 48.] Rather, Rochin quietly had lain on the table. [Rep. Tr. pp. 47-49.]

In a later conversation between the petitioner and four sheriff's narcotic officers [Rep. Tr. pp. 12, 13] Rochin stated that he had obtained these two capsules of narcotics on the previous night, that he had been using such narcotics for the past six months, and admitted that he had grabbed the capsules and had placed them in his mouth. [Rep. Tr. p. 14.] Moreover, on the same day on which his stomach had been pumped, Officer Jones had observed a large mark over a vein on the inside of petitioner's upper elbow, which mark was the type mark commonly found on the arm of an addict. [Rep. Tr. p. 12.]

At his trial, petitioner had taken the stand as a witness but had testified only to his name before being excused. [Rep. Tr. p. 257.] Significantly, the petitioner at his trial never described the manner in which he allegedly was manhandled by the officers in his room. Nor was any evidence presented that he had been bruised or marked in any manner. Nor was it stipulated that, if called as a witness, he would testify that he had been assaulted or battered in his room. Further, as to what transpired in the hospital, neither the defendant nor any other percipient witness for the defense gave an account of what had happened there. Rather, without stipulating to the truth of such facts, it was stipulated that if Rochin was called as a witness, he would testify that the two capsules were taken from him by use of the stomach pump without his consent and against his will. [Rep. Tr. p. 239.]

## ARGUMENT.

### THERE IS NO FEDERAL QUESTION HEREIN INVOLVED.

#### I.

#### Evidence Obtained by Unreasonable or Unlawful Search and Seizure Is Admissible in California Courts.

The rule is well settled in California that evidence otherwise competent is not rendered inadmissible by the fact that it might have been obtained by improper or illegal means.

Thus in the case of *People v. Gonzales*, 20 Cal. 2d 165, 124 P. 2d 44, the defendants Gonzales and Chierotti had been prosecuted for conspiracy to commit grand theft. Police officers, without warrants of any kind, had entered Chierotti's apartment during his absence and had taken therefrom certain evidence of the alleged crime. This evidence was offered at the trial. Before the trial, Chierotti had secured an injunction against the use of the evidence but at the trial the court refused to enforce the injunction and admitted the evidence in question. Thereafter, the California Supreme Court held that evidence obtained in violation of the California Constitution respecting unlawful search and seizure is admissible. On pages 168-171 of the opinion, the California Supreme Court declared:

"The Fourth Amendment to the Constitution of the United States prohibits unreasonable searches and seizures by federal officers. Pursuant to this mandate the federal courts forbid the introduction in court of evidence obtained by an illegal search or seizure if a timely motion for its exclusion is made

by the accused. (*Byars v. United States*, 273 U. S. 28 (47 S. Ct. 248, 71 L. Ed. 520); *Go-Bart Importing Co. v. United States*, 283 U. S. 344 (51 S. Ct. 153, 75 L. Ed. 374); *Gould v. United States*, 252 U. S. 298, 302 (41 S. Ct. 261, 65 L. Ed. 647); *Silverthorne Lumber Co. v. United States*, 251 U. S. 385 (40 S. Ct. 182, 64 L. Ed. 319); *Boyd v. United States*, 116 U. S. 616 (6 S. Ct. 524, 29 L. Ed. 746); *Weeks v. United States*, 232 U. S. 383 (34 S. Ct. 341, 58 L. Ed. 652); *Nardone v. United States*, 308 U. S. 338 (60 S. Ct. 266, 84 L. Ed. 307); *Ex parte Jackson*, 96 U. S. 727, 733 (24 L. Ed. 877); *Amos v. United States*, 252 U. S. 313 (41 S. Ct. 266, 65 L. Ed. 654); *Agnello v. United States*, 269 U. S. 20 (46 S. Ct. 4, 70 L. Ed. 145).) The California Constitution contains an identical provision (Cal. Const., art. I, sec. 19), but the accepted rule in this state, as in many others, permits the introduction of improperly obtained evidence on the ground that the illegality of the search and seizure does not affect the admissibility of the evidence. (*People v. Mayen*, 188 Cal. 237 (205 Pac. 435, 24 A. L. R. 1383); *In re Polizzotto*, 188 Cal. 410 (205 Pac. 676); *People v. Le Doux*, 155 Cal. 535 (102 Pac. 517); *Herrischer v. State Bar*, 4 Cal. (2d) 399 (49 P. (2d) 832). See cases cited in 88 A. L. R. 348.) The defendant may have civil and criminal remedies against the officers for their illegal acts (see Pen. Code, sec. 146; *Silva v. MacAuley*, 135 Cal. App. 249 (26 P. (2d) 887, 27 P. (2d) 791); *Ryan v. Crist*, 23 Cal. App. 744 (139 Pac. 436); 15 So. Cal. L. Rev. 139, 141 *et seq.*), but the state is not precluded from using the evidence obtained thereby.

"The Fourth Amendment to the Constitution of the United States is not a limitation upon the states (*National Safety Deposit Co. v. Stead*, 222 U. S. 50

(34 S. Ct. 209, 58 L. Ed. 504); *Ohio v. Dollison*, 194 U. S. 445 (24 S. Ct. 703, 48 L. Ed. 1062)), and California is free to interpret its own Constitution. Defendants contend, however, that the prohibition in the Fourth Amendment of unreasonable searches and seizures is included in the provision of the Fourteenth Amendment that no state shall deprive any person of life, liberty, or property without due process of law, and therefore that under the interpretation given to the Fourth Amendment by the federal courts the introduction of evidence obtained by an illegal search and seizure constitutes a denial of due process of law. Not all of the first ten amendments to the federal Constitution, however, fall within the concept of due process of law. (*Palko v. Connecticut*, 302 U. S. 319 (58 S. Ct. 149, 82 L. Ed. 288); *Twining v. New Jersey*, 211 U. S. 78 (29 S. Ct. 14, 53 L. Ed. 97); *Snyder v. Massachusetts*, 291 U. S. 97 (54 S. Ct. 330, 78 L. Ed. 674, 90 A. L. R. 575). See 39 Harv. L. Rev. 431; 24 Harv. L. Rev. 366.) In the determination of whether the prohibition against unreasonable searches and seizures is included within this concept, the unlawful search and seizure must be distinguished from the introduction in court of the evidence obtained as a result thereof. 'The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures' may be so fundamental as to make any unreasonable search and seizure by a public officer a violation of due process of law. It does not necessarily follow, however, that the use in a court of law of evidence thus obtained is so contrary to fundamental principles of liberty and justice as to constitute a denial of due process of law. . . . The use of evidence obtained through an illegal search and seizure, however, does not violate due process of law for it does not affect the fairness or impartiality

of the trial. (*People v. Defore*, 242 N. Y. 13 (150 N. E. 585); *People v. Mayen*, *supra*; *Com. v. Donnelly*, 246 Mass. 507 (141 N. E. 500); *Johnson v. State*, 152 Ga. 271 (109 S. E. 662, 19 A. L. R. 641).) The fact that an officer acted improperly in obtaining evidence presented at the trial in no way precludes the court from rendering a fair and impartial judgment. It has long been an established rule of evidence that 'the admissibility of evidence is not affected by the illegality of the means through which the party has been enabled to obtain the evidence.' (8 Wigmore, Evidence. (3rd ed.), sec. 2183, p. 5, and cases there cited.)"

Stated otherwise, it has been held that the Fourth Amendment to the Constitution of the United States, relating to searches and seizures, only applies to the Federal Government and its agencies, and that evidence obtained in violation of Section 19 of Article I of the California Constitution prohibiting unreasonable searches and seizures is admissible in California Courts for where competent evidence is produced on a trial the courts will not stop to inquire or investigate the source from whence it comes or the means by which it was obtained.

*People v. Mayen*, 188 Cal. 237, 240-251, 205 Pac. 435, 24 A. L. R. 1383, and cases therein cited.

In accord:

*People v. Raffington*, 98 A. C. A. 657, 659, 220 P. 2d 967, 969-970, hearing by California Supreme Court denied August 10, 1950;

*People v. Richardson*, 83 Cal App. 302, 305, 256 Pac. 616, Hearing by Calif. Sup. Ct. denied July 21, 1927, certiorari denied by U. S. Supreme Court, 276 U. S. 615, 48 Supreme Court 208. 72 L. Ed. 732.

Moreover, such evidence illegally obtained is admissible in California courts whether taken from the defendant's premises. (*In re Polizzotto*, 188 Cal. 410, 411, 205 Pac. 676; *People v. Oreck*, 74 Cal. App. 2d 215, 217-218, 168 P. 2d 186; *People v. Richardson*, 83 Cal. App. 302, 305, 256 Pac. 616, *supra*) or from his person.

*People v. Wren*, 59 Cal. App. 116, 117, 210 Pac. 60;

*People v. Martin*, 70 Cal. App. 271, 273, 233 Pac. 85.

Indeed, the approach of petitioner herein, is similar to that urged in *People v. Harmon*, 89 Cal. App. 2d 55, 58, 200 P. 2d 32, where the court said:

"The contention that the evidence was obtained in violation of the Fourth Amendment of the Constitution of the United States is not well founded. The California rule is that the illegality of search and seizure does not affect the admissibility of the evidence—there is no denial of due process of law because the previous illegal acts do not affect the fairness and impartiality of the trial itself, and the defendant may have civil and criminal remedies against the officers for said illegal acts. (*People v. Mayen*, 188 Cal. 237 (205 P. 435, 24 A. L. R. 1383); *People v. Gonzales*, 20 Cal. 2d 165 (124 P. 2d 44); *People v. One 1941 Mercury Sedan*, 74 Cal. App. 2d 199, 202 (168 P. 2d 443).) Defendant admits that the rule stated in *People v. Gonzales*, *supra*, is the controlling rule in this state, but raises the question in the hope that prior decisions will be disapproved. It must be held that the evidence was factually and legally sufficient to uphold the verdict."

II.

Neither Article I, Section 13, of the California Constitution nor the Fifth Amendment Precluded the Admission of Evidence of the Narcotic Content of Petitioner's Stomach.

A. The Privilege Against Self-incrimination Is Limited to Testimonial Compulsion and Does Not Include Forced Physical Disclosures.

Petitioner urges that the forced pumping of his stomach constituted an invasion of his privilege against self-incrimination in violation of Article I, Section 13, of the California Constitution and the Fifth Amendment to the Federal Constitution.

Article I, Section 13, of the California Constitution provides in part:

" . . . No person shall . . . be compelled in any criminal case, to be witness against himself; . . . "

However, the privilege against self-incrimination extends only to testimonial evidence but does not include forced physical disclosures.

Wigmore generally is cited as being one of the foremost proponents of limiting the privilege against self-incrimination to testimonial compulsion. Thus, in an early revised edition of Greenleaf, he said:

"The scope of the privilege . . . includes only the process of testifying by word of mouth or in writing. . . . It has no application to such physical evidential circumstances as may exist on the witness' body or about his person."

Greenleaf, Evidence (Wigmore's 16th Ed. 1899),  
615 Section 469e.

Again, in Wigmore's own work (Wigmore, Evidence (3rd ed. 1940), 363, Sec. 2263), it is said:

"... it is not merely any and every compulsion that is the kernel of the privilege, in history and in the constitutional definitions, but testimonial compulsion."

Very similar to the instant case is the case of *People v. One 1941 Mercury Sedan*, 74 Cal. App. 2d 199, 168 P. 2d 443, a proceeding for forfeiture of an automobile used for transportation of marijuana wherein it appeared that the driver of the vehicle on his apprehension had swallowed some brown paper which he had in his hands, in which case the appellate court reversed the lower court and allowed in evidence the evidence which had been obtained by forcibly pumping the stomach of the driver. Early in its opinion, the District Court of Appeal in 74 Cal. App. 2d 199 at page 202, observed:

"... Such offense likewise is a criminal offense insofar as the persons in the car who are transporting narcotics are concerned. This being so, for the purposes of this appeal, and without now deciding the question, it may be assumed that the same rules apply, so far as the admissibility of the rejected evidence is concerned, as would apply were this a criminal charge against Williams."

Thereafter, the court, on pages 202-203 of said opinion, reiterated the rule, that even assuming the proffered evidence had been secured illegally, such illegally obtained evidence is admissible if competent. In addition, that court held that evidence as to the narcotic content of the substances pumped from the driver's stomach was not privileged under the California Constitution, Article I, Section 13, and should have been admitted, since such

evidence did not depend on the testimonial utterances of the driver for its probative force; that the privilege against self-incrimination does not preclude the introduction of physical disclosures a defendant is forced to make or the results of tests to which he has involuntarily submitted; that the privilege only protects the individual from any forced disclosures made by him whether oral or written; and that it is limited to the protection against testimonial compulsion. Specifically, the appellate court stated:

"In line with the weight of authority it is our opinion that the privilege against self-incrimination does not preclude the introduction of physical disclosures the defendant is forced to make, or the results of tests to which he has involuntarily submitted. It is our view that the privilege only protects the individual from any forced disclosures made by him, whether oral or written. It is limited to the protection against testimonial compulsion. The privilege protects the accused from the process of extracting from his own lips against his will an admission of guilt, but it does not extend to the exclusion of his body as evidence when such evidence may be relevant and material. The privilege is aimed at preventing the compulsory oral examination of the accused before or during trial. Experience of many years has demonstrated that when statements are extorted from an accused there is a strong likelihood that the extorted evidence would be unreliable. But the reason for the rule no longer exists when physical evidence is considered.

*People v. One 1941 Mercury Sedan*, 74 Cal. App. 2d 199, 212-213, 168 P.2d 443, 451, petition for hearing denied by Supreme Court June 27, 1946. Carter, J., and Schauer, J., voting for hearing.

For a complete discussion of the subject of the admissibility of evidence of forced physical disclosures as non-violative of the privilege against self-incrimination, see *People v. One 1941 Mercury Sedan, supra* (74 Cal. App. 2d), at pages 202-213, inclusive, and cases cited therein.

Incidentally, the case of *People v. One 1941 Mercury Sedan, supra*, approved the California cases of *People v. Gutierrez*, 126 Cal. App. 526, 14 P. 2d 838, and *People v. Salas*, 17 Cal. App. 2d 75, 61 P. 2d 771, where the courts held that the results of physical examinations to which the defendants voluntarily submitted are admissible. However, the court in the *Mercury Sedan* case, specifically pointed out that those cases did not pass upon, nor did they involve, the question as to whether the results of an involuntary physical examination are admissible. In *People v. Salas, supra*, the defendant had not objected to an examination of his forearm, and it was held that a properly qualified person could testify that the arm showed scars as though made by a hypodermic syringe.

See, also: *People v. Gin Hauk Jue*, 93 Cal. App. 2d 72, 74, 208 P. 2d 717, holding that evidence of hypodermic needle marks on defendant's arm was admissible in a charge of illegal possession of opium in violation of Section 11500 of the Health and Safety Code and citing *People v. Casas*, 77 Cal. App. 2d 255, 175 P. 2d 19.

A recent case involving the admissibility in evidence of forced physical disclosures and citing with approval *People v. One 1941 Mercury Sedan, supra* (74 Cal. App. 2d 199, 168 P. 2d 443) is the case of *People v. Tucker*, 88 Cal. App. 2d 333, 344, 198 P. 2d 941. In the *Tucker* case, the defendant had been convicted of violation of Section 501 of the California Vehicle Code in that he had driven a car under the influence of intoxicating liquor,

resulting in a collision with another vehicle and causing bodily injury to specified persons. On appeal to the District Court of Appeal, Tucker urged that evidence of the alcoholic content of his blood specimen had been taken while he was in a semi-conscious condition and without his consent, in violation of Article I, Section 13, of the California Constitution; Sections 688 and 1323 of the California Penal Code, and the Fifth Amendment to the Federal Constitution. However, the Appellate Court rejected Tucker's contentions and affirmed his conviction declaring that the rule against self-incrimination extends to testimonial evidence only, and not to those cases where the defendant has been compelled to submit to physical examination and tests which are later presented as evidence against him. (In *People v. Tucker, supra*, Petition for Rehearing denied November 19, 1948, and Petition for Hearing denied by California Supreme Court December 2, 1948.)

**B. The Privilege Against Self-incrimination Did Not Empower the Petitioner to Use His Body to Conceal or Secrete Evidence Already Under the Observation of the Law Enforcement Officers.**

In the case at bar the evidence is clear that the arresting officers first saw the two capsules in question on a nightstand beside the bed in petitioner's room. [Rep. Tr. p. 5.] After Deputy Sheriff Jones had pointed to the capsules from approximately two feet away [Rep. Tr. pp. 5-33] and had asked Rochin about them, petitioner had grabbed the capsules and had placed them in his mouth. [Rep. Tr. pp. 5, 6, 33-34.] Hence the pumping of petitioner's stomach was necessitated by his own attempt to destroy evidence or to use his body to conceal evidence. Nevertheless, petitioner strenuously insists that so long as he physically

was able to get the capsules into his digestive tract he can use his body as a shield to preclude the law enforcement officers from obtaining evidence which they previously had seen and would have taken into custody but for his affirmative act of swallowing the capsules.

Indeed, the instant case is quite analogous to *Ash v. State*, 139 Tex. Crim. Rep. 420, 141 S. W. 2d 341, 343, where the accused who had been charged with receiving stolen property, swallowed several of the stolen rings. Against his will and over his objection he was given an enema and the stolen property thus recovered later was produced in evidence at his trial. Following his conviction he appealed, alleging that the privilege against self-incrimination had been violated. On page 343 (141 S. W. 2d ..... ) the court stressed the fact that after the appellant had come under the officers' observation he had placed the objects in his mouth. Thereafter, the court observed:

" . . . The evidence is replete with the conduct of the appellant in fighting the officers physically resisting every effort made by them to procure the rings, but there is no evidence to indicate any cruelty or unusual treatment on their part in doing so. They gave him an enema, a very normal and natural thing to do, thereby extracting the rings which the appellant had chosen to secrete in this most unusual manner. If the act of the officers should be considered unusual, it was brought about by reason of the act of the accused party."

See, also:

• *People v. One 1941 Mercury Sedan*, 74 Cal. App. 2d 199, 211-212, 168 P. 2d 443, Petition for Hearing in Supreme Court denied June 27, 1946, two Justices voting for a hearing, citing with approval *Ash v. State*, *supra* (139 Tex. Crim. Rep. 420, 141 S. W. 2d 341, 343.).

**C. The Evidence Herein Discloses No Objection to the Stomach Pumping Which Failure to Object Constitutes a Waiver of Any Privilege Against Self-incrimination.**

Although petitioner never testified relative to the pumping of his stomach, it was stipulated without conceding the truth thereof, that if he was called as a witness petitioner would testify that the two capsules were taken from him by use of the stomach pump without his consent and against his will. [Rep. Tr. p. 239.] On the other hand, the instant record discloses that Deputy Sheriff Jones testified that when the officers put petitioner in the car they told him that they were going to cause his stomach to be pumped by a doctor but petitioner offered no objection. [Rep. Tr. p. 43.] At the hospital, petitioner got on the operating table himself and when Jones asked the doctor to pump his stomach Rochin said nothing. [Rep. Tr. pp. 43, 44.] Petitioner did not state that he didn't want a tube placed down his throat [Rep. Tr. p. 45] nor did Jones hear petitioner offer an objection to having his stomach pumped. [Rep. Tr. p. 48.] Rather, Rochin quietly had lain on the table. [Rep. Tr. pp. 47-49.]

It is respondent's contention that the foregoing evidence by the arresting officer fully supported the conclusion that there was no objection by petitioner to his stomach pumping, and therefore, a voluntary submission to a physical examination by petitioner.

See *People v. Bundy*, 168 Cal. 777, 781-782, 145 Pac. 537, where a failure to object was regarded as a voluntary submission, and a waiver of any privilege against self-incrimination.

Certainly, it is not inconceivable that petitioner, upon reflection following his hurried action in getting the capsules down his throat, realized that his health demanded that the two capsules of narcotic be removed from his stomach.

III.

**No Constitutional Rights of the Petitioner Have Been Abridged.**

In support of respondent's contention that no constitutional rights of the petitioner have been abridged herein the attention of this Honorable Court is directed to the following well settled principles of law:

*First*, the Fourth and Fifth Amendments to the Constitution of the United States are not limitations upon the states;

*Second*, the adoption of the Fourteenth Amendment did not incorporate and make operative in state courts the entire Bill of Rights of the first eight Amendments to the Federal Constitution;

*Third*, the Fourteenth Amendment does not forbid the admission in a state court of evidence obtained by unreasonable search and seizure, though such evidence would have been excluded in a prosecution in a federal court because of a violation of the Fourth Amendment to the United States Constitution, and

*Fourth*, the clause of the Fifth Amendment protecting a person against being compelled to be a witness against himself, is not made applicable to the states by the Fourteenth Amendment through either its privileges and immunities or due process clauses.

Indeed, it long has been the law that the first ten amendments to the Constitution of the United States, including the Bill of Rights, are not binding upon the states but are only restrictions upon the Federal Government.

*Wolf v. Colorado* (1949), 338 U. S. 25, 69 S. Ct. 1359, 1360, 93 L. Ed. 1782;

*Adamson v. California*, (1947), 332 U. S. 46, 67 S. Ct. 1672, 1675, 91 L. Ed. 1903;

*Brown v. New Jersey* (1889), 175 U. S. 172, 175 20 S. Ct. 77, 44 L. Ed. 119;

*Barron v. Baltimore*, 7 Pet. 242, 8 L. Ed. 672;

*Spies v. Illinois*, 123 U. S. 131, 8 S. Ct. 21, 22, 31 L. Ed. 80;

*Barrington v. Missouri*, 205 U. S. 483, 27 S. Ct. 582, 51 L. Ed. 890;

*Twining v. New Jersey* (1908), 211 U. S. 78, 93, 98, 29 S. Ct. 14, 17, 53 L. Ed. 97;

*Feldman v. United States*, 322 U. S. 487, 490, 64 S. Ct. 1082, 1083, 88 L. Ed. 1408, 154 A. L. R. 982.

Specifically, the Fourth Amendment to the Constitution of the United States is not a limitation upon the states.

*National Safe Deposit Co. v. Stead*, 232 U. S. 58, 71, 34 S. Ct. 209, 58 L. Ed. 504;

*Ohio v. Dollison*, 194 U. S. 445, 447, 24 S. Ct. 703, 48 L. Ed. 1062;

*People v. Gonzales*, 20 Cal. 2d 165, 169, 24 P. 2d 44.

Nor is the Fifth Amendment to the Federal Constitution a limitation upon the states.

*Palca v. Connecticut*, 391 U. S. 819, 58 S. Ct. 149, 150, 82 L. Ed. 288.

*Twining v. New Jersey*, 211 U. S. 78, 88, 29 S. Ct. 14, 53 L. Ed. 97.

Moreover, it has been held that the adoption of the Fourteenth Amendment did not incorporate and make op

erative in state courts the entire Bill of Rights of the first eight amendments to the United States Constitution on the ground that the rights protected by those amendments are, by virtue of the Fourteenth Amendment, to be regarded as privileges and immunities of citizens of the United States, nor does the due process clause of the Fourteenth Amendment draw all of the Federal Bill of Rights under its protection.

*Maxwell v. Dow*, 176 U. S. 581; 20 S. Ct. 448, 455, 44 L. Ed. 597;

*Twining v. New Jersey*, 211 U. S. 78, 29 S. Ct. 14, 19-20, 53 L. Ed. 97;

*Adamson v. California*, 332 U. S. 27, 67 S. Ct. 1672, 1676, 91 L. Ed. 1903;

*Wolf v. Colorado*, 338 U. S. 25, 69 S. Ct. 1359, 1360, 93 L. Ed. 1782;

*Palko v. Connecticut*, 302 U. S. 319, 58 S. Ct. 149, 151-152, 82 L. Ed. 288.

Thus, in the recent case of *Wolf v. Colorado*, 338 U. S. 25, 93 L. Ed. 1782, 69 S. Ct. 1359, at page 1360, the Supreme Court of the United States declared:

Unlike the specific requirements and restrictions placed by the Bill of Rights, Amendments I to VIII, upon the administration of criminal justice by federal authority, the Fourteenth Amendment did not subject criminal justice in the States to specific limitations. The notion that the 'due process of law' guaranteed by the Fourteenth Amendment is shorthand for the first eight amendments of the Consti-

tution and thereby incorporates them has been rejected by this Court again and again, after impressive consideration. See, *e. g.*, *Hurtado v. California*, 110 U. S. 516, 4 S. Ct. 111, 292, 28 L. Ed. 232; *Twining v. New Jersey*, 211 U. S. 78, 29 S. Ct. 14, 53 L. Ed. 97; *Brown v. Mississippi*, 297 U. S. 278, 56 S. Ct. 461, 80 L. Ed. 682; *Palko v. Connecticut*, 302 U. S. 319, 58 S. Ct. 149, 82 L. Ed. 288. Only the other day the Court reaffirmed this rejection after thorough reexamination of the scope and function of the Due Process Clause of the Fourteenth Amendment. *Adamson v. California*, 332 U. S. 46, 67 S. Ct. 1672, 91 L. Ed. 1903, 171 A. L. R. 1223. The issue is closed."

Thereafter, the United States Supreme Court, in *Wolf v. Colorado*, *supra*, on page 1364 (69 S. Ct. 1359), reaffirmed the proposition that in a prosecution in a state court for a state crime the Fourteenth Amendment does not forbid the admission of evidence obtained by unreasonable search and seizure, though the evidence would have been inadmissible in a prosecution for violation of a federal law in a federal court because of a violation of the Fourth Amendment to the United States Constitution.

Similarly, it is settled law that the clause of the Fifth Amendment protecting a person against being compelled to be a witness against himself is not made effective by the Fourteenth Amendment as a protection against state action on the ground that freedom from testimonial compulsion is a right of national citizenship, or because it is a personal privilege or immunity secured by the Federal Constitution as one of the rights of man that are listed in the Bill of Rights. Moreover, the privilege against self-incrimination is not part of the right to a fair trial

protected by the due process clause of the Fourteenth Amendment to the Federal Constitution.

*Adamson v. California*, 332 U. S. 46, 67 S. Ct. 1672, 1675-1677, 91 L. Ed. 1903, and cases cited therein.

See, also:

*Twining v. New Jersey*, 211 U. S. 78, 91-98, 29 S. Ct. 14, 16-19, 53 L. Ed. 97.

### Conclusion.

It is well settled that the admissibility of evidence in a state court is governed by the applicable state law, and that the California rule is that even improperly obtained evidence is admissible in a California court. Hence, respondent respectfully submits that the petitioner herein has failed to present a substantial federal question as would require this Honorable Court to exercise its jurisdiction within the meaning of *Zucht v. King*, 260 U. S. 174, 176, 43 S. Ct. 24, 25, 67 L. Ed. 194. Upon the record and for the reasons hereinabove stated, respondent requests that the writ prayed for herein be denied.

Respectfully submitted,

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